In the High Court of Judicature at Madras

Dated:13.02.2007

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The Honourable Mr.Justice A.C.ARUMUGAPERUMAL ADITYAN

Second Appeal Nos.617 & 618 OF 1997

Rajendran ..Appellant in both appeals

v

Govindasami ..Respondent in S.A.No.617 of 1997 [Plaintiff].

1. Kaliaperumal
2. Muthuvalli
3. Renuka ..Respondents in S.A.No.618 of 1997 [Defendants 2 to 4].

These second appeals are filed against the judgment and decree dated 3.3.1997 made in A.S.No.24 of 1993 and A.S.No.37 of 1993 on the file of the Court of Subordinate Judge, Cuddalore against the decree and judgment dated 11.1.1993 made in O.S.Nos. 399 of 1990 and 375 of 1990 respectively on the file of Additional District Munsif's Court, Cuddalore.

For Appellant : Mrs.Hema Sampath,Senior Counsel for Mr.R.Subramanian
For Respondents : Mr.S.K.Rakhunathan

COMMON JUDGMENT

These appeals have been preferred against the Judgment and decree in A.S.No.24 of 1993 and A.S.No.37 of 1993 on the file of the Court of Subordinate Judge, Cuddalore against the decree and judgment dated 11.1.1993 made in O.S.Nos. 399 of 1990 and 375 of 1990 respectively. The defenant in O.S.No. 399 of 1990 who has succeeded before the trial Court had lost his case in the appeal is the appellant in S.A.No.617 of 1997. The defendant in O.S.No.375 of 1990 who has lost his case in the appeal is the appellant in S.A.No.618 of 1990.

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S.A.NO.617 OF 1997:

The short facts in the plaint in O.S.No.399 of 1990 relevant for the purpose of deciding this appeal are as follows:

The suit is for permanent injunction in respect of the plaint schedule property which is 2 Acres and 7 ½ Cents in Old Survey No.694/1 out of 11 Acres 8 Cents. The new survey Number is 21/1 measuring 0.83.0 ares. The plaint schedule property absolutely belonged to Anjalai Ammal. She along with her son leased out the suit property to the plaintiff under a lease deed dated 15.10.1989. The lease is for a period of two years. The annual lease rent is Rs.500/- In pursuance of the lease deed the plaintiff is in possession of the suit property as a lessee. He is a cultivating tenant to the suit property. The defendant has no right or interest whatsoevr in the suit property. However, the defendant is making attempt to trespass into the suit property and trying to pluck the cashewnuts. If the defendant is allowed to trespass into the suit property,it will result in heavy loss to the plaintiff. Hence the suit for injunction.

3. The defendant in his written statement would contend that the suit property never belonged to Anjalaiammal. It is also not true that the said Anjalaiammal leased out the suit property to the plaintiff. The plaintiff is never in possession of the suit property as a lessee. The plaintiff is not personally cultivating the suit property as a tenant much less a cultivating tenant. The suit properpty originally belonged to one Sinthamani Ammal, mother of Kasi Samuttiar. Sinthamani Ammal has been in possession and enjoyment of the property by paying the land tax to the Government. She had settled about one half of the property with specific boundaries to her son Kasi Samuttiar under a settlement deed dated 30.3.1963 and delivered possession. At the time when the property was settled by Sinthamani Ammal in favour of his son, there was a partition in the family between Kasi Samuttiar and his brothers. With the consent of Sinthamani Ammal, the remaining extent purchased by Sinthamani Ammal and some more extent in the same survey number which belonged to the family was allotted to the plaintiff. The patta has b een transferred in the name of Kasi Samuttiar in Patta No.188. A borewell was sunk by Kasi Samuttiar and for the said purpose the other properties which belonged to the family were mortgaged to Cuddalore Cooperative Land Development Bank. Kasi Samuttiar validily sold the property to the defendant on 27.2.1990 and delivered possession. Anjalaiammal has absolutely no title or interest in the property. Anjalai Ammal is the daughter of one Pavadai. The said Pavadai who sold the property to Sinthamani Ammal under a validly executed sale deed. So after the sale, Pavadai has no interest and Anajalaiammal also cannot claim any interest. The lease deed propounded is a fabricated one. The plaintiff is not entitled to the relief of injunction . Hence the suit is liable to be dismissed.

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S.A.No.618 of 1997:

4. The short facts in the plaint in O.S.No.375 of 1990 relevant for the purpose of deciding this appeal are as follows:
The suit is for declaration of plaintiff's title and also for consequential permanent injunction in respect of the plaint schedule old Survey No. 694/1(Re-survey number21/1) measuring 2 Acres 7 ½ Cents out of 11.08 acres in Vellakarai Village, Cuddalore District. The whole extent of the plaint schedule property belonged to Chinnthamani Ammal, the mother of Kasi Samuttiar. She purchased 1.58 acres from one Pavadai Padayachi son of Sadaya Padayatchi on 22.7.1951. The remaining extent was purchased by Chinthamani Ammal earlier. As per the sale deed dated 22.7.1951, Chinthamani Ammal took possession of the property and she has been in possession and enjoyment of the same. She has been paying the land tax . On 30.3.1961, she had settled the said property in favour of her son Kasi Samuttiar and also delivered possession. On the date of settlement, there was a partition in the family of Kasi Samuttiar between him and his brothers. In the said partition with the consent of the mother, the remaining property purchased in 1951 and also some more extent in the same survey number which belonged to the family was given to the plaintiff. So the total extent to which Kasi Samuttiar became entitled to is two acres seven cents and that is the suit property. The patta for the property was transferred in the name of Kasi Samuttiar and the patta Number is 188. In the plaint schedule property a bore well was sunk by Kasi Samuttiar and for the said purpose , the other properties which belonged to the family were mortgaged to Cuddalore Cooperative Land Development Bank. Kasi Samuttiar has thus been in possession and enjoyment of the property for over the statutory period. Kasi Samuttiar has validly sold the suit property to the plaintiff on 27.2.1990 and delivered possession of the same. Plaintiff has taken possession of the property and he has been in possession. The defendants have absolutely no title or interest in the property. The first defendant is the daughter of Pavadai, who had sold the property to the mother of Kasi Samuttiar viz., Chinthamaniammal under a sale deed as early as in the year 1951. If the said sale, the Pavadai has no title or interest in the suit property. In the third week of January 1990, the first defendant for the first time questioned the title of Kasi Samuttiar to the suit property followed it up with a notice. Kasi Samuttiar met the first defendant and appraised her of the sale deed executed by his father and thereafter the first defendant was convinced that she had no title or interest in the property. But suddenly on the morning of 21.4.1990, the first defendant supported by her men attempted to trespass on the property which was effectively prevented by the plaintiff. The plaintiff apprehends at any time, the defendants may trespass in to the suit property. Pending suit, the first defendant died, D2 to D4 are his legal representatives. Hence the suit.

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5. The defendant in her written statement would contend that old survey No.694/1 is comprised of 11 acres 8 cents. It belonged to several personss. Chinthamaniammal was entitled to only one acre 58 cents. What ever property was owned and enjoyed by Chinthamaniammal was only in the south eastern corner as the boundaries in the document will prove. Hence Kasi Samuttiar and the plaintiff can claim only property in the south eastern corner. The defendant specifically denies the truth, validity and genuineness of the sale deed dated 22.7.1951. The defendant is not aware of the mortgage. In any evenet, the plaintiff's vendor did not dig any well or install bore and pumpset in his property. The plaintiff or his predecessors-in-title never enjoyed any extent beyond those covered by documents. The entire survey number is in the form of an inverted "L, in the south western most corner, the defendant owns 2acres 7 ½ cents. This extent was settled upon by plaintiff's mother as it was her ancestral property. The registered settlement deed dated 3.4.1964 was true and valid, duly executed and validly attested and was accepted and acted upon. The defendant alone is in possession of this property in her own right. She has also prescribed title by adverse possession. In view of her old age , she is unable to do personal cultivation. Hence, the defendant has leased out the suit property to Govindasami under a registered lease deed dated 15.10.1989 for two years. In pursuance of the lease deed the lessee is in actual possession. The plaintiff or his predecessors-in-title do not have any right or possession in the south western most corner of S.No.694 /1. There is no question of adverse possession in favour of the plaintiff. The defendant does not claim any interest in the south eastern corner of the suit survey number. In the south western most 2 acres and 7 ½ cents , there is a well which is also enjoyed by the defendant. The plaintiff has deliberately not stated the details of the case and the area with a view to create confusion. On 28.1.1990, the defendant issued a notice to the plaintiff, but the plaintiff has not sent any reply. The lessee is a necessary party to the suit. Hence the suit is liable to be dismissed.

6. On the above pleadings, the trial Court had framed six issues in O.S.No.399 of 1990 and two issues in O.S.No.375 of 1990 for trial. The learned trial Judge, has conducted a joint trial in respect of O.S.No.399 of 1990 and 375 of 1990. On the side of the plaintiff, P.Ws1 to 3 were examined and Exs P1 to P13 were marked. On the side of the defendant D.Ws.1 to 4 were examined and Exs B1 to B22 were marked.

7. After going through the evidence both oral and documentary, the learned trial Judge has dismissed the suit in O.S.No.399 of 1990 and decreed the suit in O.S.No.375 of 1990. The plaintiff in O.S.No.399 of 1990 has preferred an appeal in A.S.No.24 of 1993 and the defendant in O.S.No.375 of 1990 has preferred an appeal in A.S.No.37 of 1993 before the Sub Court, Cuddalore. Exs B23 and 24 were marked before the first

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appellate Court. After going through the submissions of both appellant and respondents, the first appellate Court has allowed the appeal in A.S.No.24 of 1993 and also allowed the appeal in A.S.No.37 of 1993. Hence the plaintiff in O.S.No.399 of 1990 has preferred S.A.No.617 of 1997 and the defenant in O.S.No.375 of 1990 has preferred S.A.No.618 of 1997.

8. The substantial questions of law involved in these appeals are

" 1. Whether in law the lower appellate Court is right in relying on the unregistered lease deed Ex B18 rather than the registered sale deed Ex A3?

2. Whether in law the lower appellate Court is right in ignoring the dictum laid down in 97 Law Weekly 365 that when there is no ambiguity about the extent sold, and when the intention of the parties is clear, extent should prevail over boundaries?

9. I heard Mrs.Hema Sampath, learned Senior Counsel appearing for the appellant and Mr.S.K.Rekhunathan, learned counsel appearing for the respondents and considered their respective submissions.

10.The Points:

The main suit is O.S.No.375 of 1990 filed by Rajendran for declaration of title and for consequential injunction in respect of 2 acres 7 ½ cents in Old Survey No.694/1. O.S.NO.399 of 1990 was filed by one Govindasami claiming that he is the cultivating tenant in respect of 2 acres 7 ½ cents in the same old survey number 694/1 in Vellakarai Village, Cuddalore District. Admittedly, the suit property belonged to one Pavadai Padayatchi. He had executed Ex A1 sale deed on 22.7.1951 in respect of 1 acre 58 cents in favour of Chinthamaniammal. Chinthamaniammal had executed Ex A9 settlement deed in respect of 1acre and 4 cents in suit survey number 694/1 in favour of her son Kasi Samuttiar. From the above said Kasi Samuttiar and his chilldren the plaintiff said to have purchased 2 acres 7 ½ cents in Survey Number 694/1 under Ex A3 sale deed dated27.2.1990. So under Ex A3 sale deed the plaintiff Rajendran claims that he is entitled to 2 acres 7 ½ cents in suit survey number 694/1. On the other hand, Govindasami, the plaintiff in O.S.No.390 of 1990 would contend that he is in possession of the entire 2 acres 7 ½ cents in survey number 694/1 as a cultivating tenant under one Anjalaiammal who is the daughter of Pavadai Padayachi. Pavadai Padayachi had executed Ex B1 gift deed dated 3.4.1964 in favour of Anjalaiammal in respect of 1 acre 58 cents in suit survey number 694/1. Ex B18 is the lease deed executed by Anjalaiammal and her son Kaliyaperumal Padaiyachi in favour of Govindasami(Plaintiff in O.S.No.399 of 1990) So under Ex B18 lease deed the plaintiff in O.S.No.399 of 1990 claims that he is in possession and enjoyment of the entire 2 acres 7 ½ cents. The above said documents are important documents to decide the issue in these appeals. Ex A1 is the earliest document dated 22.7.1951 under which Pavadai Padayachi has executed the sale deed in respect of 1 acre 58 cents in favour of Chinthamaniammal in survey number 694/1. Chinthamaniammal had executed a

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settlement under Ex A9 dated 30.3.1961 in respect of 1 acre and 4 cents in favour of his son Kasi Samuttiar. The plaintiff in O.S.No.375 of 1990 viz., Rajendran had purchsed 2 acres 7 ½ cents under Ex A3 sale deed dated 27.2.1990 from Kasinathan and his sons. So after the execution of Ex A1 in the year 1951 in favour of Chinthamaniammal in respect of 1 acre 58 cents in survey No.694/1 , Pavadai Padayachi had no remaining right or title in respect of 1 acre 58 cents in survey number 694/1 to execute the gift deed in the year 1964 in favour of his daughter Anjalaiammal from whom the plaintiff in O.S.No.399 of 1990 viz., E.S.Govindasami claimed his possessory right under Ex B18. If Ex B1 goes, it follows that under Ex B18, the plaintiff in O.S.No.399 of 1990 is not entitled to claim any possessory right in respect of 1 acre 58 cents. To show the possession in respect of the suit property, the plaintiff has produced Exs B6 to B8 which would show that chandrakasinathan was in possession and enjoyment of o.83.0 acres in survey number 694/1.

11. The learned counsel appearing for the respondents would contend that the property sold under Ex B1 is on the south eastern portion of survey number 694/1 . For this proposition, the learned counsel relying on Ex B23 and Ex B24. Ex B23 is a survey map for new survey No.21/1(old survey No,694/1) would contend that the suit survey number property is 21/5 as per Ex B23. The same argument was also advanced before the first appellate Court hence, the first appellate Judge has observed in his judgment at paragraph 22 and has come to a conclusion that the property settled in favour of Kasi Samuttiar by his mother Chinthamaniammal under Ex A9 is only on the south eastern portion. A careful reading of Ex A9 will clearly go to show that out of 1 acre 58 cents, Chinthamaniammal had purchased under Ex A1; 1 acre 4 cents on the south eastern portion was settled in favour of Kasi Samuttiar under Ex A9. It cannot be presumed that under EX A9 the portion conveyed under Ex A9 viz., 1 acre 4 cents was earmarked out of 11.2 acres on the south eastern portion.

12. The learned counsel appearing for the appellant in S.A.No.618 of 1997 (Rajendran) would contend that under Ex A3 the appellant is entitled to 2 acres 7 ½ cents. This contention of the learned counsel appearing for the appellant in S.A.No.618 of 1997 cannot hold any water because under Ex A3, the vendors of the plaintiff are not entitled to execute a sale deed in respect of 2 acres 7 ½ cents in survey number 694/1 because the vendor under Ex A3 got right and title in respect of 1 acre 4 cents alone in surveynumber 694/1 under EX A9 settlement deed executed by Chinthamaniammal. Even Chinthamaniammal herself had purchased only 1 acre 58 cents under Ex A1 dated 22.7.1951 from Padavadai Padayachi. There is absolutely no evidence on record to show that apart from Ex A9 settlement deed, there was other documents in favour of Kasi Samuttiar, the vendor under Ex A3 in respect of some more extent in survey No.694/1.Under such circumstances, Ex A3 sale deed dated 27.2.1990 in favour of plaintiff Rajendran in O.S.No.375 of 1990 is valid only for 1 acre and 4 cents in survey Number 694/1. After executing Ex A1 sale deed in respect of 1 acre 58 cents ,Pavadai Padayachi has no lease in respect of survey No.694/1 to

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bequeath the same in favour of his daughter Anjalaiammal under Ex B1 gift deed. There is no document on record to show that Pavadai Padapyachi was entitled to more than 1 acre 58 cents in survey number 694/1 . Under such circumstances, I am of the considered view that the decree and Judgment in A.S.No.37 of 1993 on the file of the Court of Subordinate Judge, Cuddalore is liable to be set aside in respect of 1 acre 4 cents in survey number 694/1 and decree and judgment in A.S.No.24 of 1993 on the file of the Court of Subordinate Judge,Cuddalore is also liable to be set aside in entirety. Point is answered accordingly.

13. In fine, S.A.No.617 of 1997 is allowed and decree and judgment in A.S.No.24 of 1993 on the file of the Court of Subordinate Judge, Cuddalore is set aside and the suit in O.S.No.399 of 1990 on the file of the Court of District Munsif, Cuddalore is dismissed. S.A.No.618 of 1997 is allowed in part and decree and judgment in A.S.No.37 of 1993 on the file of the Court of Subordinate Judge, Cuddalore is set aside and the suit in O.S.No.375 of 1990 on the file of the Court of District Munsif, Cuddalore is decreed in respect of 1 acre 4 cents in the suit survey number 694/1. The parties are directed to bear their respective costs.

14. At this juncture, the learned counsel appearing for the respondents in S.A.No.618 of 1997 represents that the said 1 acre 4 cents cannot be localised in land in lieu of the boundary description in Ex A9. If it is so, then it is to be sorted out in a partition suit.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

sg

To
1. The Subordinate Judge, Cuddalore.
2. The Additional District Munsif,Cuddalore.
3. The Record Keeper, VR Section, High Court, Madras.

+ 2 CCs to Mrs.Hema Sampath, Advocate SR NO 9102

+ 1 CC To Mr. S.K.Rakhunathan, Advocate SR NO. 8295

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